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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 126

MISSOURI PACIFIC RAILROAD COMPANY, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

ROY L. ARTERBURY
1828 Bank of the Southwest Bldg.
Houston 2, Texas
Attorney for Petitioner

ALPHA LAW BRIEF CO., 402 M & M BLDG., HOUSTON 2

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To the United States Court of Appeals for the Fifth Circuit

Petitioner, MISSOURI PACIFIC RAILROAD COMPANY, prays that a Writ of Certiorari, issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled cause on January 14, 1958.

Citations to Opinion Below

The opinion of the Court of Appeals (R. 32), printed in Appendix "A" hereto, P. 11, is not officially reported but is printed in 250 Federal Reporter 2nd Series at Page 805. The Court of Appeals wrote no opinion in denying Petitioner's Petition for Rehearing and Second Petition for Rehearing.

Jurisdiction

The Judgment of the Court of Appeals was entered on January 14, 1958 (R. 39). A timely Petition for Rehearing, filed on February 1, 1958, was denied March 12, 1958 (R. 44). Leave to Petitioner to file a Second Petition for Rehearing was granted (R. 62) and such Petition was filed March 21, 1958, and was denied by the Court on May 22, 1958. Jurisdiction of this Court is invoked under 28 *U.S.C.*, Section 1254. The Court of Appeals decided questions of substance probably not in accord with the applicable decisions of this Court.

Questions Presented

1. Whether under the doctrine of Primary Jurisdiction the issue as to rate applicable on the Shipments of Air Force Organization Equipment involved herein should have been referred to the Interstate Commerce Commission. *United States of America v. Western Pacific Railroad Company*, 352 U.S. 59, 77 S. Ct. 161.

2. Whether the set-off plead by Respondent to a portion of Petitioner's complaint was barred by virtue of the limitation provision in the Commodity Credit Corporation Charter Act of 1948, 15 *U.S.C.* 714b (c), where the cause of action asserted in the set-off arose more than ten years before such set-off was exercised.

Statutes Involved

The Statutory provisions involved are 5 *U.S.C.* Sec. 1001 (A), 5 *U.S.C.* Sec. 1004(d) and the Commodity Credit Corporation Charter Act, 15 *U.S.C.* Sec. 714b(c), (g), (h), and (k). They are printed in Appendix "B". infra, pp. 18-22.

Statement

The two questions arise out of unrelated occurrences. The facts with reference to the first question are as follows:

The Respondent delivered to Petitioner, a common carrier, nine carloads of air force organization shipping cases to be transported from St. Louis, Missouri to Houston, Texas. Each case consisted of four nested containers made of 3/8" plywood, the inside and outside of each container being covered with .018 inch vulcanized fibre glued to the plywood with a water resistant glue. The Petitioner attempted to collect charges on the basis that these items were covered by the tariff covering "baskets (boxes) or Hampers: chemically hardened fibre." The Respondent contended that these items were within the tariff covering "boxes, wooden, NOIBN." NOIBN means otherwise indexed by name in the classification (R. 16 and 17). The District Court sustained Petitioner's contention (R. 24) and the Court of Appeals sustained Respondent's contention (R. 39). The Petitioner, by second Petition for Rehearing, requested the Court of Appeals to remand the case so that Petitioner might submit the issue to the Interstate Commerce Commission.

The facts with reference to the second question are as follows:

During 1943 and prior thereto the commodity credit corporation delivered to Petitioner for transportation several freight cars containing food (R. 24). The Petitioner performed the transportation services and billed Respondent for what it contended to be the applicable charges. These bills were paid and subsequently Respondent deducted, from Bills presented by Petitioner for Shipments which moved in 1953, certain sums of money, alleging that

it had overpaid Petitioner on the 1943 shipments. Petitioner contended that this set off was barred by Section 4c of the Commodity Credit Corporation Charter Act of 1948, 15 *U.S.C.* Sec. 714b(c). The District Court sustained Petitioner's position and the Court of Appeals reversed the District Court on this point.

The District Court had jurisdiction of this cause under 28 *U.S.C.* Sec. 1346(2), since the action is a suit against the United States upon a claim not exceeding $10,000.00.

Reasons for Granting the Writ

A. With reference to the First Point.

The decision of the Court of Appeals on this point is directly contra to the decision of this Court in the case of the *United States of America v. Western Pacific Railroad Company*, 352 U.S. 59, 77 S. Ct. 16, and the decision of Court of Appeals in the cases of *Northwestern Auto Parts Company v. Chicago, Burlington & Quincy Railroad Company, et al.*, 240 Fed. 2d 743 and *Northern Pacific Railway Company v. United States*, 213 F. 2d 366.

In the *Western Pacific Case, Supra*, this Court had under consideration the matter of which tariff should apply to a shipment of aerial bomb cases filled with napalm gel. The carrier in that case contended that the Commodity should be classed as "incendiary bombs", even though the burster and bomb fuse had not been added, while the government contended that the commodity should be carried at the combination rate applicable to the components of the aerial bomb cases.

We quote from the opinion of this Court in the *Western Pacific Case* from P. 166 of 77 S. Ct. as follows:

"Thus the first question presented is whether effectuation of the statutory purposes of the Interstate Commerce Act requires that the Interstate Commerce Commission should first pass on the construction of the tariff in dispute here; this, in turn, depends on whether the question raises issues of transportation policy which ought to be considered by the Commission in the interests of a uniform and expert administration of the regulatory scheme laid down by that Act. Decision is governed by two earlier cases in this Court. In Texas & Pacific R. Co. vs. American Tie & Timber Co. 234 U.S. 138, 34 S. Ct. 885, 58 L. Ed. 1255, a shipper attempted to ship oak railroad ties under a tariff for 'lumber'. The carrier rejected them, urging that such ties were not lumber. In a damage action expert testimony was received on the question. This Court, however, held that the Interstate Commerce Commission alone could resolve the question. The effect of the holding is clear; the Courts must not only refrain from making tariffs, but, under certain circumstances, must decline to construe them as well."

This Court further points out that the question of whether steel casings filled with napalm gel are incendiary bombs within the context of the tariff is more than simply a question of reading the tariff language or applying abstract rules of construction. The basic issue is how far the reasons justifying a high rate for the carriage of extra-hazardous objects are applicable to the shipment in question. That is the issue involved in this case. The basic issue, in the instant case, is how far the reasons justifying a higher rate for the carriage of chemically hardened fibre cases are applicable to the shipments in question. Certainly there are commercial reasons justifying a higher rate on chemically hardened fibre cases than on wooden boxes.

The holding of the Court of Appeals in the *Northwestern Auto Parts Company Case, Supra,* followed the holding of this Court in the *Western Pacific Case.* We quote from the opinion of that case as follows (P. 740 of 240 F. 2d):

> "The problem of deciding in a case whether plaintiff's shipments were 'scrap iron or steel having value for remelting purposes only' involves many of the considerations expressed by the Supreme Court in regard to the problem in the Western Pacific case. The record here gives us no inkling of the factors that produce the scrap iron rates or the rate on 'automotive engine parts other than automobile bodies, old, used, having value for reconditioning,' or what it is that justifies the difference between the rates. All that the Supreme Court said in the Western Pacific case (77 S. Ct. 165) as to the necessity for 'expert and specialized knowledge' in that case is applicable here, and it must be held here in accord with the teaching of the Western Pacific case, that the question of the tariff construction, as well as that of the reasonableness of the tariff as applied, are within the exclusive primary jurisdiction of the Interstate Commerce Commission."

Respondent will no doubt contend here, as it did in the Court of Appeals, that Petitioner did not raise this point timely. In answer to that contention we urge upon the Court the fact that the point was not raised by either party in this Court in the *Western Pacific Case.* Certainly the raising of this point by Petitioner in the Court of Appeals was more timely than was the action of either party in the *Western Pacific Case.* We also urge upon this Court the holding of the Court of Appeals in the case of *Northern Pacific Railway Company v. United States,* 213

F. 2d 366. The Court of Appeals, in that case, held that this point is jurisdictional and hence could be raised for the first time in the Appellate Court.

B. With reference to the Second Question.

Since the transportation services on which Respondent contends it was overcharged were performed for the Commodity Credit Corporation in 1943 and prior thereto and the set-off made by Respondent was made from bills submitted by Petitioner for services rendered in 1953 (R. 24), a period of ten years elapsed between the alleged overcharge and the set-off by the Respondent.

The pertinent part of the statute 15 *U.S.C.*, Sec. 714b(c) is as follows:

> ". . . No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, . . . The Defendant in any suit by or against the Corporation may plead, by way of setoff or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the Defendant's cause of action is based had not been barred prior to the date that the Plaintiff's cause of action arose . . . Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of Subsection (c) of this section to the same extent as though suit were by or against the Corporation . . ."

The wording of the Act, quoted above, is plain. Congress did not overlook the matter of administrative settlements. It specifically provided for setoffs and counterclaims in the statute. The Respondent and the court of

claims in *Union Pac. R. Co. v. U. S.*, 147 F. Supp. 483, do not give proper consideration to that portion of the statute which reads as follows:

> "The Defendant in any suit by or against the Corporation may plead, by way of setoff or counterclaim, any cause of action . . ., which would otherwise be barred by such limitation if the claim upon which the Defendant's cause of action is based had not been barred prior to the date Plaintiff's cause of action arose."

By enactment of the above sentence, Congress has stated what setoffs and counterclaims may be pled in a suit against the Corporation. Such provision certainly eliminates the pleading of any other setoffs or counterclaims. The court of claims erred when it stated that:

> "Congress did not, by Section 4(c), mean more than it said, which was that no suit could be brought upon claims more than six years old." (Appellant's brief P. 41).

Congress said more than that. It said further that setoffs or counterclaims could be pled *if they were not barred when the Plaintiff's cause of action arose.* Certainly when Congress lays down a specific condition which must be met before a setoff or counterclaim can be asserted, it meant that such setoffs and counterclaims which did not meet that condition could not be asserted. Under Appellant's construction and under the interpretation given the statute by the court of claims, there was no need for the saving provision enacted by Congress. Congress expected all setoffs to be barred by the limitation provision and evidently thought it necessary to insert the one saving provision.

The supposedly inequitable features noted by the court of claims are not in fact so inequitable. While we submit the equities of the matter should be passed upon by Congress rather than the courts, *United States v. Lindsay*, 346 U.S. 568, 98 L. Ed. 300, 74 S. Ct. 287, we respectfully submit that it certainly places no undue burden upon the Government to require it to audit its claims during a six-year period. Indeed, no reason appears why the Commodity Credit Corporation claims cannot be given preference, if such be necessary to receive an audit within six years.

Congress, in other sections, 15 *U.S.C., Section* 714b(g) and (h), has given the Corporation the power to enter into the usual business contracts in order to carry out its purpose. No doubt, Congress thought that since the Corporation was going to be engaged in the usual business transactions, it should be subject to some of the requirements to which other corporations are subject. No good reason appears why it should not be so subjected.

The argument of the Court of Claims in the *Union Pacific Supra,* is not a valid one. Congress in Sec. 4c was not dealing with the problem of administrative settlement of claims. It was speaking of a set-off or counterclaim. (And it is a set-off as counterclaim which the government is contending for in this situation (R. pps. 10-11)). No doubt the Government in considering claims against it which are barred from suit because of limitation does take into consideration, in making its administrative settlements, claims which the Commodity Credit Corporation has against the same person which are also barred from suit by limitation. But that isn't the situation present in this case. In this situation there is no contention that Petitioner's Claim is barred by limitation. Under the express

wording of Sec. 4C, quoted above, the only set-off or counterclaims which can be asserted against this Claim are those which were not barred at the time Petitioner's cause of action arose. The Respondent's counterclaim was barred at that time and hence it can not be asserted in this action.

The act upon which Appellant relies is a general statute passed in 1940. It will be noted that the statute makes no mention of services rendered to Corporations whose stock is owned by the Government. Contrast this general statute with the specific statute upon which Appellee relies. This statute was passed in 1949, nine years subsequent to the enactment of the general statute. It is axiomatic that a specific statute will control over a general statute. Especially is this true when the specific statute was enacted subsequent to the enactment of the general statute.

Conclusion

The judgment of the Court of Appeals is erroneous. It is directly contra to the holding of this Court in the *Western Pacific Case* and the Court of Appeals in the *Northwestern Auto Parts Company* and *Northern Pacific Railway Company*, cases with reference to the submitting to the Interstate Commerce Commission the question of which tariff covers the item in question. On the limitation issue the judgment of the Court is directly contra to the plain express provisions of the act. For these reasons the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ROY L. ARTERBURY
1828 Bank of the Southwest Bldg.
Houston 2, Texas
Attorney for Petitioner

APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16777

UNITED STATES OF AMERICA, *Appellant*,

VERSUS

MISSOURI PACIFIC RAILROAD COMPANY, *Appellee*

Appeal from the United States District Court for the Southern District of Texas

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(January 14, 1958)

Before HUTCHESON, Chief Judge, and RIVES and JONES, Circuit Judges

HUTCHESON, Chief Judge: This suit arises out of the action of the government in deducting, under the authority of Sec. 322 of the Transportation Act of September 18, 1940, 49 U.S.C. 66, from freight bills admittedly due, sums which it claimed as overpayments on other freight bills earlier paid.

Submitted on a stipulation of facts and decided by the district judge in favor of the plaintiff railroad, three questions are presented.

The first question is: Was the railroad, which sued for the admitted freight due it on later shipments, entitled to recover from the government the amount deducted by it in a later audit on the claim that, while the shipment was first billed to it as weighing 9290 pounds, a correction bill was later sent and it was paid for as weighing over 35,000 pounds? The primary point here, since no proof was offered as to the correct weight, is whether the plaintiff railroad company had the burden of proving that the government's deduction, based upon its assertion that the shipment weighed 9290 instead of the 35,000 pounds it paid for, was wrong, or whether the burden was upon the defendant to prove the correct weight.

The district judge found with the plaintiff that the burden was on the government, and, in addition, without any evidence to support the finding, since the correct weight was not testified to and the only part of the stipulation having any bearing on the question was that two bills of lading, the first stating the weight as 9290 and the second one stating it as over 35,000, were issued by the railroad, he categorically found that the weight was 35,300 pounds.

The second question is whether, as the plaintiff claims, shipments of Air Force cases shipped from St. Louis to Houston, of nine carloads of a commodity described on each of the bills of lading as "Item No. 1, Case, Shipping. Air Force Organization Equipment (Shipping boxes, wooden, chemically hardened fibre boxes)", were properly

charged the rates provided for in Consolidated Freight Classification No. 15 "Baskets (boxes) or hampers chemically hardened fibre", or whether, as the defendant claims, the articles are ratable and were properly charged as within exceptions to the classification in S.W. Lines Tariff 173 Q ICC No. 3584, under the description "Boxes, wooden noibn", "noibn" meaning not otherwise indexed by name in the classification.

It was stipulated that each case consisted of four nested containers made of 3/8 inch plywood. The inside and outside of each container was covered with .018 vulcanized fibre glued to the plywood with a water resistant glue. It was further stipulated that if the plaintiff's contention is correct, the plaintiff is due judgment for $2,487.57 on the item in this paragraph, and that if the defendant's contention is correct, the plaintiff is due nothing on this item.

The district judge found with the plaintiff railway company.

The third question is whether, because the withholding action was taken after the running of the period set forth in Section Four of the Commodity Credit Corporation Charter, Act of June 29, 1948, as amended, 15 U. S. C. Sec. 714(c), the United States was without authority to deduct freight charges paid from funds of the Commodity Credit Corporation on shipments made from Beaumont, Texas, for export for its account. The government contends that the statute did not come into play and was not effective because the deduction was merely an administrative act under the lawful exercise of the authority granted in Sec. 322.

The district judge held with plaintiff that the Statute barred the deduction.

As to its first claim, the government is here pointing out that, though the decision of the district judge is supported by *United States v. New York, New Haven & Hartford*, 236 F(2) 201 (1st Cir.), a writ of certiorari has been granted in it, and arguing with what has turned out to be prophetic vision[1] that the decision will be reversed and the position of the United States sustained.

As a matter of original viewpoint, as well as on the authority of *United States v. New York, New Haven and Hartford Ry. Co.*, note 1, *supra*, we find ourselves in agreement with the government's position.

When it comes to the second question, the tariff to be applied to the shipment of Air Force Organization equipment, we think the rule which should govern such construction is no better stated than in *United States v. Missouri, Kansas & Texas Railroad Co.*, 194 F(2) 777, at pages 778-9:

> "The construction of a printed railroad tariff presents a question of law and does not differ in character from that presented when the construction of any other document is in dispute. The four corners of the instrument must be visualized and all the pertinent provisions considered together, giving effect so far as possible to every word, clause, and sentence therein contained. The construction should be that meaning which the words used might reasonably carry to the shippers to whom they are addressed, and any ambiguity or

[1] United States of America, petitioner, v. New York, New Haven and Hartford Ry. Co. . . U.S. . . . (12-16-57).

> reasonable doubt as to their meaning must be resolved against the carriers. But claimed ambiguities or doubts as to the meaning of a rate tariff must have a substantial basis in the light of the ordinary meaning of the words used and not a mere arguable basis. Hohenberg v. Louisville & N. R.R. Co., 5 Cir., 46 F(2) 952; Christensen v. Northern Pac. Ry. Co. 8 Cir. 184 F(2) 534; Norvell-Wilder Supply Co. v. Beaumont, Sour Lake & Western Railway Co., 274 ICC 547."

Applying that rule to the tariffs in question here, we agree with the position of the government that the district judge wrongly construed them and the wrong rate was applied. In reaching this conclusion, we primarily put it on the ground that the tariffs under construction on their face admit of no other reasonable conclusion. But, if we are wrong in this, we think the same result is required in the application of the principle thus stated in the above question: "The construction should be that meaning which the words used might reasonably carry to the shippers to whom they are addressed, and any ambiguity or reasonable doubt as to their meaning must be resolved against the carriers." Other statements and applications of this rule are to be found in *Hohenberg v. Louisville & N. RR. Co., supra*, at page 955, *Am. Ry. v. Price*, 54 F(2) 67, and *Atlantic Coast Railway v. Atlantic Bridge Co.*, 57 F(2) 654. In the *Hohenberg* case, at page 955, the court said:

> "Where there is no ambiguity in the language used, a rate may be unjust and yet be enforced as the established one, but in doubtful cases, in the construction of a tariff, as of a law, in order to arrive at the intent of its framers, a court is

> warranted in considering how the rates claimed would operate as a matter of justice."

while in the *Atlantic Coast Line* case, the principle was thus stated:

> "Tariffs, like statutes, have the force of law; like statutes they must be expressed in clear and plain terms, so that those dealing with and governed by them may understand them and act advisedly * * * If they are ambiguous or permit of two meanings, the shipper may construe them in the most favorable way to himself which the terms permit."

Of the third point, that it was error to hold that the recovery of the alleged overpayment made by the Commodity Credit Corporation on appellee's bills was barred by Section 4(c) of the Commodity Credit Corporation Charter Act of 1948, it is sufficient to say that we agree with the position of the United States that the precise question here involved was correctly decided by the Court of Claims adversely to the carrier in *Union Pacific R.R. Co. v. United States*, 147 F. Supp. 483, and, without laboring the matter further, we hold that upon the considerations and for the reasons stated in that opinion, the finding and conclusion of the district judge was wrong.

The judgment appealed from is, therefore, REVERSED and the cause is REMANDED with directions (1) to deny appellee recovery of the deductions arising out of its charges for the transportation of the airplane fusilages and Air Force boxes, and (2) to put appellee to its proof on the question of the correctness of its charges for the

transportation of the Commodity Credit Corporation foodstuffs. REVERSED and REMANDED.

A true copy
Test:

EDWARD W. WADSWORTH
Edward W. Wadsworth
Clerk, U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana

(Seal)

JUDGMENT

Extract from the Minutes of January 14, 1958.

UNITED STATES OF AMERICA
versus
MISSOURI PACIFIC RAILROAD COMPANY

No. 16777

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions (1) to deny appellee recovery of the deductions arising out of its charges for the transportation of the airplane fusilages and Air Force boxes, and (2) to put appellee to its proof on the question of the correctness of its charges for the transportation of the Commodity Credit Corporation foodstuffs.

APPENDIX "B"

Administrative Procedure Act - 5 U.S.C. Sections 1001 (a) and 1004 (d):

"Section 1001(a) - "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of Section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by sections 301-303, 304, 305, 306-309, 310, 311-318, 1881-1884 and 1891-1902 of Appendix to Title 50, and sections 739 and 1744 of Title 12; sections 1611-1614, 1615-1646, and 981-985 of Appendix to Title 50, and sections 101-125 of Title 41; and sections 1738, 1739, and 1743 of Title 12, and sections 1821-1833 of Appendix to Title 50."

"Section 1004(d) - The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty. June 11, 1946, c. 324, p. 5, 60 Stat. 239."

Commodity Credit Corporation Charter Act 15 U.S.C. Sections 714(b), (c), (g), (h), and (k):

"Section 714 b (c) - May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne of final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in the controversy, of all suits brought by or against the Corporation: PROVIDED, That the Corporation may intervene in any court in any suit, action, or proceedings in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business. No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the corporation may plead, by way of set-off or counterclaim any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: PROVIDED, That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit. All suits against the cor-

poration shall be tried by the Court without a jury. Notwithstanding any other provision of sections 714-714o of this title, the Federal Tort Claims Act shall be applicable to the Corporation. Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of the subsection (c) of this section to the same extent as though such suit were by or against the corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of Title 28, may be brought in the United States Court of Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of sections 714-714o of this title, be brought in such court."

"Section 714 b (g) - May enter into and carry out such contracts or agreements as are necessary in the conduct of its business. State and local regulatory laws or rules shall not be applicable with respect to contracts or agreements of the corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules are inconsistent with such contracts or agreements."

"Section 714 b (h) - May contract for the use, in accordance with the usual customs or trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall have power to acquire personal property necessary to the conduct of its business but shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein

for the purpose of providing storage adequate to carry out effectively and efficiently any of the corporation's programs, or of securing or discharging obligations owing to the corporation, or of otherwise protecting the financial interests of the corporation: PROVIDED, That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: PROVIDED FURTHER, That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: AND PROVIDED FURTHER, That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: AND PROVIDED FURTHER, That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers. Notwithstanding any other provision of law, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by

the Corporation. Insofar as practicable, in effecting such exchange of goods, normal commercial easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 98 a of Title 50. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the extent approved by the Munitions Board of the National Military Establishment, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act; and when transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury of the material transferred to the stock pile. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical materials as it deems advisable in carrying out its functions and protecting its assets."

"Section 714 b (k) - Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers."